

AMENDED IN SENATE AUGUST 18, 2015

AMENDED IN SENATE JUNE 29, 2015

AMENDED IN ASSEMBLY MAY 14, 2015

AMENDED IN ASSEMBLY MAY 4, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1131

Introduced by Assembly Member Dababneh

February 27, 2015

An act to amend and repeal Section 1633.3 of the Civil Code, and to add and repeal Section 38.6 of the Insurance Code, relating to electronic records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1131, as amended, Dababneh. Insurance: electronic transmission.

Existing law generally requires that any required notice related to insurance transactions be made by mail. Existing law authorizes an insurer, under specified conditions, to provide by electronic transmission the required offer of renewal for automobile insurance, the required offer of renewal or conditional renewal for property insurance, the required offer of coverage or renewal or any disclosure required regarding earthquake insurance, and the offer of renewal for a workers' compensation policy.

Existing law also generally requires that, a record, signature, or contract may not be denied legal effect or enforceability because it is in electronic form. Existing law exempts from this requirement disability insurance and life insurance policies and certificates offered for sale to individuals 65 years of age or older, notice of an increase in premiums

on an individual life insurance policy, individual life insurance policies with a face value of less than \$10,000, a policy of individual life insurance that is initially delivered or issued for delivery in the state on and after January 1, 1990, applications for life insurance or annuity, and a policy replacement notice.

This bill would, for life insurance records, authorize additional persons to send records by electronic transmission by providing that an insurer, agent, broker, or any other person licensed by the Department of Insurance may send electronic records. This bill would expand the scope of electronic notice provisions by allowing the above licensees to send any written record by electronic transmission if not specifically excluded and if the licensee meets specified requirements. The bill would also require the commissioner to submit a report, as specified. *The bill would exempt an insurance agent or broker from civil liability for any deficiency in the electronic procedures agreed to by the parties if insurance agent or broker meets various requirements, as specified.*

This bill would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1633.3 of the Civil Code, as amended
2 by Section 3 of Chapter 913 of the Statutes of 2014, is amended
3 to read:
4 1633.3. (a) Except as otherwise provided in subdivisions (b)
5 and (c), this title applies to electronic records and electronic
6 signatures relating to a transaction.
7 (b) This title does not apply to transactions subject to the
8 following laws:
9 (1) A law governing the creation and execution of wills, codicils,
10 or testamentary trusts.
11 (2) Division 1 (commencing with Section 1101) of the Uniform
12 Commercial Code, except Sections 1206 and 1306.
13 (3) Divisions 3 (commencing with Section 3101), 4
14 (commencing with Section 4101), 5 (commencing with Section
15 5101), 8 (commencing with Section 8101), 9 (commencing with
16 Section 9101), and 11 (commencing with Section 11101) of the
17 Uniform Commercial Code.

(4) A law that requires that specifically identifiable text or disclosures in a record or a portion of a record be separately signed, including initialed, from the record. However, this paragraph does not apply to Section 1677 or 1678 of this code or Section 1298 of the Code of Civil Procedure.

(c) This title does not apply to any specific transaction described in Section 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, or 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of, Section 3071.5 of, Part 5 (commencing with Section 4000) of Division 4 of, or Part 5.3 (commencing with Section 6500) of Division 4 of this code, subdivision (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 662, paragraph (2) of subdivision (a) of Section 663, 664, 667.5, 673, 677, paragraph (2) of subdivision (a) of Section 678, subdivisions (a) and (b) of Section 678.1, Section 786 as it applies to individual and group disability policies, Section 10192.18, 10199.44, 10199.46, 10235.16, 10235.40, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be substituted for any notice that is required to be sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be construed to prohibit the recordation of any document with a county recorder by electronic means.

(d) This title applies to an electronic record or electronic signature otherwise excluded from the application of this title under subdivision (b) when used for a transaction subject to a law other than those specified in subdivision (b).

(e) A transaction subject to this title is also subject to other applicable substantive law.

(f) The exclusion of a transaction from the application of this title under subdivision (b) or (c) shall be construed only to exclude the transaction from the application of this title, but shall not be construed to prohibit the transaction from being conducted by electronic means if the transaction may be conducted by electronic means under any other applicable law.

(g) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 2. Section 1633.3 of the Civil Code, as amended by Section 4 of Chapter 913 of the Statutes of 2014, is amended to read:

1633.3. (a) Except as otherwise provided in subdivisions (b) and (c), this title applies to electronic records and electronic signatures relating to a transaction.

(b) This title does not apply to transactions subject to the following laws:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts.

(2) Division 1 (commencing with Section 1101) of the Uniform Commercial Code, except Sections 1206 and 1306.

(3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9 (commencing with Section 9101), and 11 (commencing with Section 11101) of the Uniform Commercial Code.

(4) A law that requires that specifically identifiable text or disclosures in a record or a portion of a record be separately signed, including initialed, from the record. However, this paragraph does not apply to Section 1677 or 1678 of this code or Section 1298 of the Code of Civil Procedure.

(c) This title does not apply to any specific transaction described in Section 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, or 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section

2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of, Section 3071.5 of Part 5 (commencing with Section 4000) of Division 4 of, or Part 5.3 (commencing with Section 6500) of Division 4 of this code, subdivision (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786 as it applies to individual and group disability policies, 10192.18, 10199.44, 10199.46, 10235.16, 10235.40, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be substituted for any notice that is required to be sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be construed to prohibit the recordation of any document with a county recorder by electronic means.

(d) This title applies to an electronic record or electronic signature otherwise excluded from the application of this title under subdivision (b) when used for a transaction subject to a law other than those specified in subdivision (b).

(e) A transaction subject to this title is also subject to other applicable substantive law.

(f) The exclusion of a transaction from the application of this title under subdivision (b) or (c) shall be construed only to exclude the transaction from the application of this title, but shall not be construed to prohibit the transaction from being conducted by electronic means if the transaction may be conducted by electronic means under any other applicable law.

(g) This section shall become operative on January 1, 2019.

(h) This section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

SEC. 3. Section 1633.3 of the Civil Code, as amended by Section 4 of Chapter 913 of the Statutes of 2014, is amended to read:

1633.3. (a) Except as otherwise provided in subdivisions (b) and (c), this title applies to electronic records and electronic signatures relating to a transaction.

(b) This title does not apply to transactions subject to the following laws:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts.

(2) Division 1 (commencing with Section 1101) of the Uniform Commercial Code, except Sections 1206 and 1306.

(3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9 (commencing with Section 9101), and 11 (commencing with Section 11101) of the Uniform Commercial Code.

(4) A law that requires that specifically identifiable text or disclosures in a record or a portion of a record be separately signed, including initialed, from the record. However, this paragraph does not apply to Section 1677 or 1678 of this code or Section 1298 of the Code of Civil Procedure.

(c) This title does not apply to any specific transaction described in Section 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, or 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of, Section 3071.5 of Part 5 (commencing with Section 4000) of Division 4 of, or Part 5.3 (commencing with Section 6500) of Division 4 of this code, subdivision (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786, 10086, 10113.7, 10127.7, 10127.9, 10127.10, 10192.18, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be substituted for any notice that is required to be sent pursuant to Section 1162 of the

1 Code of Civil Procedure. Nothing in this subdivision shall be
2 construed to prohibit the recordation of any document with a county
3 recorder by electronic means.

4 (d) This title applies to an electronic record or electronic
5 signature otherwise excluded from the application of this title under
6 subdivision (b) when used for a transaction subject to a law other
7 than those specified in subdivision (b).

8 (e) A transaction subject to this title is also subject to other
9 applicable substantive law.

10 (f) The exclusion of a transaction from the application of this
11 title under subdivision (b) or (c) shall be construed only to exclude
12 the transaction from the application of this title, but shall not be
13 construed to prohibit the transaction from being conducted by
14 electronic means if the transaction may be conducted by electronic
15 means under any other applicable law.

16 (g) This section shall become operative on January 1, 2021.

17 SEC. 4. Section 38.6 is added to the Insurance Code, to read:

18 38.6. (a) (1) Any written record required to be given or mailed
19 to any person by a licensee relating to the business of life insurance,
20 as defined in Section 101 of this code may, if not excluded by
21 subdivision (b) or (c) of Section 1633.3 of the Civil Code, be
22 provided by electronic transmission pursuant to Title 2.5
23 (commencing with Section 1633.1) of Part 2 of Division 3 of the
24 Civil Code, if each party has agreed to conduct the transaction by
25 electronic means pursuant to Section 1633.5 of the Civil Code,
26 and if the licensee complies with the provisions of this section. A
27 valid electronic signature shall be sufficient for any provision of
28 law requiring a written signature.

29 (2) For purposes of this section, the definitions set forth in
30 Section 1633.2 of the Civil Code shall apply. The term “licensee”
31 means an insurer, agent, broker, or any other person who is required
32 to be licensed by the department.

33 (3) *Notwithstanding subdivision (1) of Section 1633.2 of the*
34 *Civil Code, for purposes of this section, “person” includes, but is*
35 *not limited to, the policy owner, policyholder, applicant, insured,*
36 *or assignee or designee of an insured.*

37 (b) In order to transmit a life insurance record electronically, a
38 licensee shall comply with all of the following:

39 (1) A licensee, or licensee’s representative, acquires the consent
40 of the person to opt in to receive the record by electronic

1 transmission, and the person has not withdrawn that consent, prior
2 to providing the record by electronic transmission. A person's
3 consent may be acquired verbally, in writing, or electronically. If
4 consent is acquired verbally, the licensee shall confirm consent in
5 writing or electronically. The licensee shall retain a record of the
6 person's consent to receive the record by electronic transmission
7 with the policy information so that it is retrievable upon request
8 by the department while the policy is in force and for five years
9 thereafter.

10 (2) A licensee discloses, in writing or electronically, to the
11 person all of the following:

12 (A) The opt in to receive the record by electronic transmission
13 is voluntary.

14 (B) That the person may opt out of receiving the record by
15 electronic transmission at any time, and the process or system for
16 the person to opt out.

17 (C) A description of the record that the person will receive by
18 electronic transmission.

19 (D) The process or system to report a change or correction in
20 the person's email address.

21 (E) The licensee's contact information, which includes, but is
22 not limited to, a toll-free number or the licensee's Internet Web
23 site address.

24 (3) The opt-in consent disclosure required by paragraph (2) may
25 be set forth in the application or in a separate document that is part
26 of the policy approved by the commissioner and shall be bolded
27 or otherwise set forth in a conspicuous manner. The person's
28 signature shall be set forth immediately below the opt-in consent
29 disclosure. If the licensee seeks consent at any time prior to the
30 completion of the application, consent and signature shall be
31 obtained before the application is completed. If the person has not
32 opted in at the time the application is completed, the licensee may
33 receive the opt-in consent at any time thereafter, pursuant to the
34 same opt in requirements that apply at the time of the application.
35 The licensee shall retain a copy of the signed opt-in consent
36 disclosure with the policy information so that each is retrievable
37 upon request by the department while the policy is in force and
38 for five years thereafter.

39 (4) The email address of the person who has consented to
40 electronic transmission shall be set forth on the consent disclosure.

1 In addition, if the person who consented receives an annual
2 statement, the email address of the person who has consented shall
3 be set forth on that record.

4 (5) The licensee shall annually provide one free printed copy
5 of any record described in this subdivision upon request by the
6 person.

7 (6) If a provision of this code requires a licensee to transmit a
8 record by first class mail, regular mail, does not specify a method
9 of delivery, or is a record that is required to be provided pursuant
10 to Article 6.6 (commencing with Section 791), and if the licensee
11 is not otherwise prohibited from transmitting the record
12 electronically under subdivision (b) of Section 1633.8 of the Civil
13 Code, then the record may be transmitted by electronic transmission
14 if the licensee complies with all of the requirements of ~~Section~~
15 *Sections 1633.15 and 1633.16* of the Civil Code.

16 (7) Notwithstanding subdivision (b) of Section 1633.8 of the
17 Civil Code, if a provision of this code requires a licensee to
18 transmit a record by return receipt, registered mail, certified mail,
19 signed written receipt of delivery, or other method of delivery
20 evidencing actual receipt by the person, and if the licensee is not
21 otherwise prohibited from transmitting the record electronically
22 under Section 1633.3 of the Civil Code and the provisions of this
23 section, then the licensee shall maintain a process or system that
24 demonstrates proof of delivery and actual receipt of the record by
25 the person consistent with this paragraph. The licensee shall
26 document and retain information demonstrating delivery and actual
27 receipt so that it is retrievable, upon request, by the department at
28 least five years after the policy is no longer in force. The record
29 provided by electronic transmission shall be treated as if actually
30 received if the licensee delivers the record to the person in
31 compliance with applicable statutory delivery deadlines. A licensee
32 may demonstrate actual delivery and receipt by any of the
33 following:

34 (A) The person acknowledges receipt of the electronic
35 transmission of the record by returning an electronic receipt or by
36 executing an electronic signature.

37 (B) The record is made part of, or attached to, an email sent to
38 the email address designated by the person, and there is a
39 confirmation receipt, or some other evidence that the person

1 received the email in his or her email account and opened the
2 email.

3 (C) The record is posted on the licensee's secure Internet Web
4 site, and there is evidence demonstrating that the person logged
5 onto the licensee's secure Internet Web site and downloaded,
6 printed, or otherwise acknowledged receipt of the record.

7 (D) If a licensee is unable to demonstrate actual delivery and
8 receipt pursuant to this paragraph, the licensee shall resend the
9 record by regular mail to the person in the manner originally
10 specified by the underlying provision of this code.

11 (8) Notwithstanding any other law, a notice of lapse,
12 nonrenewal, cancellation, or termination of any product subject to
13 this section may be transmitted electronically if the licensee
14 demonstrates proof of delivery as set forth in paragraph (7) and
15 complies with the other provisions in this section.

16 (9) If the record is not delivered directly to the electronic address
17 designated by the person but placed at an electronic address
18 accessible to the person, a licensee shall notify the person in plain,
19 clear, and conspicuous language at the electronic address
20 designated by the person that describes the record, informs that
21 person that it is available at another location, and provides
22 instructions to the person as to how to obtain the record.

23 (10) (A) Upon a licensee receiving information indicating that
24 the record sent by electronic transmission was not received by the
25 person, the licensee shall, within five business days, comply with
26 either clause (i) or (ii):

27 (i) Contact the person to confirm or update the person's email
28 address and resend the record by electronic transmission. If the
29 licensee elects to resend the record by electronic transmission, the
30 licensee shall demonstrate the transmission was received by the
31 person, pursuant to paragraph (6), (7), or (8). If the licensee is
32 unable to confirm or update the person's email address, the licensee
33 shall resend the record by regular mail to the licensee at the address
34 shown on the policy, or, if the underlying statute requires delivery
35 in a specified manner, send the record in that specified manner.

36 (ii) Resend the record initially provided by electronic
37 transmission by regular mail to the insured at the address shown
38 on the policy, or, if the underlying statute requires delivery in a
39 specified manner, send the record in that specified manner.

1 (B) If the licensee sends the first electronic record within the
2 time period required by law and the licensee complies with both
3 paragraph (5) and subparagraph (A) of this paragraph, the record
4 sent pursuant to clause (i) or (ii) of subparagraph (A) shall be
5 treated as if mailed in compliance with the applicable statutory
6 regular mail delivery deadlines.

7 (11) The licensee shall not charge any person who declines to
8 opt in to receive a record through electronic transmission from
9 receiving a record electronically. The licensee shall not provide a
10 discount or an incentive to any person to opt in to receive electronic
11 records.

12 (12) The licensee shall verify a person's email address via paper
13 writing sent by regular mail when more than 12 months have
14 elapsed since the license's last electronic communication.

15 (c) *An insurance agent or broker acting under the direction of*
16 *a party that enters into a contract by means of an electronic record*
17 *or electronic signature shall not be held liable for any deficiency*
18 *in the electronic procedures agreed to by the parties under that*
19 *contract if all of the following are met:*

20 (1) *The insurance agent or broker has not engaged in negligent,*
21 *reckless, or intentional tortious conduct.*

22 (2) *The insurance agent or broker was not involved in the*
23 *development or establishment of the electronic procedures.*

24 (3) *The insurance agent or broker did not deviate from the*
25 *electronic procedures.*

26 ~~(e)~~

27 (d) On or before January 1, 2020, the commissioner shall submit
28 a report to the Governor and to the committees of the Senate and
29 Assembly having jurisdiction over insurance and the judiciary,
30 regarding the impact and implementation of the authorization of
31 the electronic transmission of certain insurance renewal offers,
32 notices, or disclosures as authorized by this section. The report
33 shall include input from insurers, consumers, and consumer
34 organizations, and shall include an assessment of the department's
35 experience pertaining to the authorization of the electronic
36 transmission of insurance renewals as authorized by this section.

37 ~~(d)~~

38 (e) Notwithstanding paragraph (4) of subdivision (b) of Section
39 1633.3 of the Civil Code, for any policy of life insurance, as
40 defined in Section 101, any statutory requirement for a separate

1 acknowledgment, signature, or initial, which is not expressly
2 prohibited by subdivision (c) of Section 1633.3 of the Civil Code,
3 may be transacted using an electronic signature, or by electronic
4 transaction, subject to all applicable provisions of this section.

5 ~~(e)~~

6 (f) The department may suspend a licensee from providing
7 records by electronic transmission if there is a pattern or practices
8 that demonstrate the licensee has failed to comply with the
9 requirements of this section. A licensee may appeal the suspension
10 and resume its electronic transmission of records upon
11 communication from the department that the changes the licensee
12 made to its process or system to comply with the requirements of
13 this section are satisfactory.

14 ~~(f)~~

15 (g) This section shall remain in effect only until January 1, 2021,
16 and as of that date is repealed, unless a later enacted statute, that
17 is enacted before January 1, 2021, deletes or extends that date.